

STATE OF WASHINGTON



OFFICE OF
INSURANCE COMMISSIONER

In the Matter of:

Progressive Northern Insurance Company,
Progressive Northwestern Insurance Company,
Progressive Preferred Insurance Company,
Progressive Casualty Insurance Company,
Progressive Classic Insurance Company, and
Progressive Max Insurance Company,

Authorized Insurers.

No. D03-253

Consent Order
Imposing a Fine

FINDINGS OF FACT

1. Progressive Northern Insurance Company, Progressive Northwestern Insurance Company, Progressive Preferred Insurance Company, Progressive Casualty Insurance Company, Progressive Classic Insurance Company, and Progressive Max Insurance Company (the "Companies") are insurers authorized to engage in the business of insurance in Washington state by the Washington State Office of Insurance Commissioner (the "OIC") pursuant to certificates of authority issued by the OIC.
2. Legislation relating to credit scoring was enacted in 2002 and signed into law on April 4, 2002. The legislation is codified at RCW 48.18.545 and RCW 48.19.035 and requires that all rating plans using an insurance scoring model to determine personal insurance rates or premiums be filed and approved to be effective by June 30, 2003. The OIC also promulgated regulations implementing this legislation contained in Chapter 284-24A WAC that became effective on October 7, 2002.
3. On December 6, 2002, the Companies submitted a rate filing relating to, inter alia, boat owner's insurance. The Companies believed there was a legislative intent to exclude boat insurance from the application of the above legislation. Boat owners insurance is a form of personal inland marine insurance and personal inland marine insurance is a form of personal insurance. By notice dated December 26, 2002, the OIC accordingly disapproved the Companies' filing and requested that an insurance scoring model filing, demographic data, and a multivariate analysis be included in any response to the disapproval. On January 16, 2003, the OIC issued Technical Assistance Advisory T03-01 that repeated the June 30, 2003, deadline for approval of personal insurance rating plans using an insurance scoring model and outlined what was expected of insurers for timely compliance with the credit scoring legislative requirements. On February 18, 2003, Lee Barclay, senior actuary of the OIC, and

Bill Kerner, of the Companies, participated in a telephone conference in which Mr. Barclay confirmed that the requirements relating to credit scoring applied to the Product.

4. On March 10, 2003, the Companies submitted a response to the OIC's December 26, 2002, disapproval notice that did not include the requested items and stated the Companies' belief that boat owner's insurance was not intended to be subject to the credit scoring legislation. The OIC then issued a second disapproval of the Product in which the request for the items listed in finding number three above was repeated. In an accompanying e-mail message transmitted to the Companies on the same day, the OIC stressed the need for prompt submission of the insurance scoring model and corresponding multivariate analysis filing. On April 25, 2003, the Companies submitted a response to the OIC's March 11, 2003, disapproval notice that again omitted the items requested and again asserted the Companies' belief that the Product was not subject to the credit scoring legislation.
5. By written notice dated April 28, 2003, the OIC issued its third disapproval of the Product in response to the Companies' April 25, 2003, submission, in which the request for the items listed in finding number seven above was made again. By e-mail message dated May 7, 2003, the Companies agreed to abide with the OIC's position that the credit scoring legislation applied to boat owner's insurance and, with respect to renewal business, requested an extension of time to October 31, 2003, to comply with the requirements which request was not granted.
6. The Companies then submitted a credit scoring model filing and on June 16, 2003, obtained OIC approval of rates for their boat insurance renewal policies effective August 9, 2003. Between the June 30, 2003, effective date of RCW 48.19.035(2) and the August 9, 2003, effective date of the OIC's approval of the Companies' rates, the Companies renewed 1,937 boat policies using rates that utilized a credit scoring model that had not been approved by OIC.

CONCLUSIONS OF LAW

1. Pursuant to RCW 48.18.545(1)(g)(vi) and RCW 48.19.035(1)(d)(vi), the credit scoring legislation applies to personal inland marine insurance including boat owner's insurance.
2. Pursuant to RCW 48.19.035(6), the rating provisions of the credit scoring legislation apply to all personal insurance policies issued or renewed on or after June 30, 2003.
3. Pursuant to WAC 284-24A-015(2), rates, risk classification plans, rating factors and rating plans that use an insurance scoring model to determine personal insurance rates or premiums were required to be filed and approved for use on or before June 30, 2003.
4. By renewing 1,937 boat insurance policies using rates utilizing an insurance scoring model between June 30, 2003, and August 9, 2003, without having obtained an effective approval date for such rates that was on or before June 30, 2003, the Companies violated RCW

48.19.035(2) for each boat policy renewed between June 30, 2003, and August 9, 2003, and for each day during this period.

5. RCW 48.05.185 authorizes the Commissioner to impose a fine in lieu of or in addition to the suspension or revocation of an insurer's certificate of authority.

CONSENT TO ORDER

NOW, THEREFORE, the Companies consent to the following in consideration of their desire to resolve this matter without further administrative or judicial proceedings, and the Insurance Commissioner consents to settle the matter in consideration of the Companies' payment of a fine as set forth below.

1. The Companies admit to the foregoing Findings of Fact and Conclusions of Law, acknowledge their duty to comply fully with the applicable laws of the State of Washington, consent to the entry of this Order, and waive further administrative or judicial challenge to the OIC's actions related to the subject matter of this Order.
2. Within thirty days of the entry of the Order, the Companies agree to pay to the OIC a fine in the total amount of \$23,370 which amount is calculated on the basis of \$100 per day for the forty-day period of noncompliance from June 30, 2003, to August 9, 2003, and \$10 for each boat policy renewed during such period.
3. Failure to pay the fine set forth in paragraph two shall constitute grounds for the revocation of the Companies' certificates of authority and for the recovery of the full fine.

Executed this 4th day of March, 2004.

PROGRESSIVE NORTHERN INSURANCE COMPANY,
PROGRESSIVE NORTHWESTERN INSURANCE COMPANY,
PROGRESSIVE PREFERRED INSURANCE COMPANY,
PROGRESSIVE CASUALTY INSURANCE COMPANY,
PROGRESSIVE CLASSIC INSURANCE COMPANY, and
PROGRESSIVE MAX INSURANCE COMPANY.

By: _____

Printed Name: _____

Printed Corporate Title: _____

ORDER

NOW, THEREFORE, pursuant to the foregoing Findings of Fact, Conclusions of Law, and Consent to Order, the Insurance Commissioner hereby orders as follows:

1. Progressive Northern Insurance Company, Progressive Northwestern Insurance Company, Progressive Preferred Insurance Company, Progressive Casualty Insurance Company, Progressive Classic Insurance Company, and Progressive Max Insurance Company are ordered to pay a fine within thirty days in the amount of \$23,370.
2. The payment liability and obligations of the Companies under this Order are joint and several.
3. The Companies' failure to pay the fine within the time limit set forth above shall result in the revocation of the Companies' Certificates of Authority and in the recovery of both the fine amount through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.

ENTERED AT TUMWATER, WASHINGTON, this 5th day of March, 2004.

MIKE KREIDLER
Insurance Commissioner

By: _____
CHARLES D. BROWN
OIC Staff Attorney
Legal Affairs Division